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5 UNITED STATES DISTRICT COURT
6 EASTERN DISTRICT OF WASHINGTON

7 UNITED STATES OF AMERICA,
8 Plaintiff,

9 -vs-

10 KENNETH GOOCH
11 Defendant.

} NO. CR-04-0262-WFN-1

} ORDER

12 A motion and sentencing hearing was held December 13, 2006. The Defendant, who
13 is in custody, was present and represented by Bryan Whitaker; Assistant United States
14 Attorney Jared Kimball represented the Government.

15 The Court addressed the Government's Motion for Reconsideration and/or
16 Clarification. The Court recognizes that the March 30, 2006, Order contained an erroneous
17 statement. The erroneous statement refers to the scope of search. To reconcile the
18 January 17, 2006 (Ct. Rec. 112) and the March 30, 2006 Order (Ct. Rec. 196), the Court
19 clarifies the March 30, 2006, Order by striking the erroneous language.

20 Additionally, after reviewing the documents submitted by the Government, the Court
21 determined that the Defendant qualifies for the Armed Career Criminal sentencing
22 enhancement in 18 U.S.C. § 924(e). Though the statute only requires three previous
23 convictions for violent felonies, the Court determined four of the Defendant's previous
24 convictions qualify as predicate offenses for the purposes of the statute. The convictions for
25 Second Degree Robbery and Second Degree Assault are predicate violent felonies based on
26 the categorical approach.

1 The other two convictions, the Second Degree Burglary and Third Degree Assault,
2 qualify under the modified categorical approach. To determine whether these convictions
3 meet the standard of a violent felony, the Court relied upon the language of the applicable
4 state statute combined with the Indictment and the Defendant's signed statements in the plea
5 agreements. According to the Statement of Defendant on Guilty Plea, when Defendant pled
6 guilty to Burglary in the Second Degree he admitted to breaking into a drug store. United
7 States' Memorandum Regarding Defendant's Armed Career Criminal Sentencing Enhance-
8 ment, Appendix B-3, filed August 17, 2006 (Ct. Rec. 235). Entering a building with a
9 common street address qualifies as a violent felony under 18 U.S.C. § 924(e). *United States*
10 *v. Striet*, 313 F. Supp.2d 1062, 1068 (W.D. Wash. 2004). Regarding the Third Degree
11 Assault conviction, Defendant similarly admitted conduct which proves "the use, attempted
12 use, or threatened use of physical force against the person of another" as required by 18
13 U.S.C. § 924(e). In pleading to an Information which charged the Defendant with causing
14 physical injury to "a human being by means of a weapon or other instrument or thing likely
15 to produce bodily harm," the Defendant admitted in his Statement of Defendant on Plea of
16 Guilty that he hit the victim four times. United States' Memorandum Regarding Defendant's
17 Armed Career Criminal Sentencing Enhancement, Appendix C-4 & C-1, filed August 17,
18 2006 (Ct. Rec. 23).

19 The Court has reviewed the file and Motion and is fully informed. This Order is entered
20 to memorialize and supplement the oral rulings of the Court. Accordingly,

21 **IT IS ORDERED** that:

22 1. Government's Motion for Reconsideration and/or Clarification, filed April 7, 2006,
23 **Ct. Rec. 206**, is **GRANTED**. The Court clarifies the March 30, 2006, Order by striking a
24 sentence which does not affect the Court ruling in the Order.

25 2. The sentence in the March 30, 2006 Order, in paragraph 4, starting on line 16,
26 reading, "The Court now recognizes that the Gilstrap statement was likely fruit of the

1 poisonous tree as Mr. Gilstrap was located in the basement and it was determined that Officer
2 Edwards should not have entered the basement on March 20, 2004," is **STRICKEN**.

3 3. The Defendant qualifies for the Armed Career Criminal sentencing enhancement
4 as reflected in the sentence.

5 The District Court Executive is directed to file this Order and provide copies to counsel
6 **AND TO** United States Probation Officer Al Barrett.

7 **DATED** this 13th day of December, 2006.

8
9 s/ Wm. Fremming Nielsen
10 12-13 WM. FREMMING NIELSEN
SENIOR UNITED STATES DISTRICT JUDGE